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Lisbon Cleaning, Inc. and Local 108, Retail, Wholesale and Department Store Union, AFL-CIO.
Case 22-CA-26432

September 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 21, 2004, the General Counsel issued the complaint and an amended complaint on July 21 and August 10, 2004, respectively, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 22-RC-12376. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On August 30, 2004, the General Counsel filed a Motion for Summary Judgment. On September 2, 2004, as corrected on September 7, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but contests the validity of the certification based on its objections to the election in the representation proceeding.¹

¹ The Respondent's answer also denies that the certified unit is appropriate. The Respondent, however, stipulated that this unit was appropriate in the underlying representation proceeding. Any questions regarding the appropriateness of the unit could and should have been raised in the representation proceeding. *Chardon Rubber Co.*, 335 NLRB 1189 fn. 1 (2001); *Wintz Distribution Co.*, 317 NLRB 284 fn. 1 (1995), enf'd. mem. 103 F.3d 130 (6th Cir. 1996).

In its answer and response to the Notice to Show Cause, the Respondent urges the Board to order a hearing to consider, among other

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no genuine issues of material fact warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the following information from the Respondent by letters dated December 8, 2003 and May 13, 2004:

- (1) a list of all benefits currently given to unit employees;
- (2) a copy of all Summary Plan Descriptions for any Medical, Pension, 401(k), or Savings Plans given to unit employees;
- (3) waiting period for these benefits;
- (4) current starting pay and pay differentials for unit employees; and
- (5) a list of all unit job titles and descriptions.

Although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Cheboygan Health Care*

things, whether the postponement of the election from September 19, 2003 to September 26, 2003, due to Hurricane Isabel destroyed laboratory conditions necessary for the holding of a fair election. In addition, the Respondent's answer to the complaint asserts as an affirmative defense that "Since the NLRB headquarters were closed on September 19, 2003, it was unable to rule on the Respondent's Appeal from the Regional Director's determination to unnecessarily delay the election and the ruling should now be a subject of a full review and hearing." We note, however, that the Respondent filed various objections to the election, including that the Regional Director abused his discretion by postponing the election. The Respondent subsequently requested withdrawal of its objection pertaining to the postponement of the election, and the Regional Director approved the request. In these circumstances, the Respondent is precluded from raising the postponement of the election or the Board's failure to rule on its appeal concerning the postponement of the election as defenses in this unfair labor practice proceeding. *Buchanan Lumber Birmingham, Inc.* 232 NLRB 929, 931-932 n. 3 (1977).

Center, 338 NLRB No. 115 (2003); *Baker Concrete Construction*, 338 NLRB No. 48 (2002), and cases cited therein. The Respondent has not asserted any basis for rebutting the presumptive relevance of the information, apart from its contention, rejected above, that the Union's certification is invalid.

Accordingly, we grant the Motion for Summary Judgment, and will order the Respondent to bargain and to furnish the requested information to the Union.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation with its principal office and place of business in Newark, New Jersey, has been engaged in providing commercial janitorial and cleaning services at various locations throughout the State of New Jersey including Newark Liberty International Airport, the only facility involved herein.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its New Jersey facilities goods and materials valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 108, Retail, Wholesale and Department Store Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held September 26, 2003, the Union was certified on April 15, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time cleaning and maintenance employees, including cleaners, floor cleaners, carpet cleaners, window cleaners, runners and handypersons employed by the Respondent at its Newark International Airport, Terminal C, Newark, New Jersey location, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letters dated December 8, 2003 and May 13, 2004, the Union requested the Respondent to bargain and to furnish information, and, since about December 8, 2003, and specifically by letter dated June 17, 2004, the Respondent has failed and refused to do so. We find that the Respondent has thereby unlawfully failed and refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after December 8, 2003, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information it requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Lisbon Cleaning, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 108, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time cleaning and maintenance employees, including cleaners, floor cleaners, carpet cleaners, window cleaners, runners and handy-persons employed by the Respondent at its Newark International Airport, Terminal C, Newark, New Jersey location, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on December 8, 2003 and May 13, 2004.

(c) Within 14 days after service by the Region, post at its facility in Newark, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 8, 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Local 108, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time cleaning and maintenance employees, including cleaners, floor cleaners, carpet cleaners, window cleaners, runners and handy-persons employed by us at our Newark International

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Airport, Terminal C, Newark, New Jersey location, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on December 8, 2003 and May 13, 2004.

LISBON CLEANING, INC.